1134.

SUPREME COURT OF THE UNITED STATES.

No. 172.

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

JOSEPH REYNES.

IN ERROR TO THE DISTRICT COURT U. S. FOR LOUISIANA.

INDEX.

	Original.	Print.
Petition	1	2
Answer	6	4
Entry upon the minutes, fixing cause for trial	6	4
" " " " "	7	4
" " " for taking testimony	7	5
" " " entering pro confesso against certain defendants	7	5
Entry upon minutes submitting cause	8	5
Document B, filed March 13, 1846	8	5
Plat	0	6
Written evidence and letters patent of D	9	6
Translation of document A	17	9
Evidence taken before the commissioner, June 18, 1846	24	13
Judgment of the court	31	16
Petition of appeal	33	17
Citation	35	17
Certificate of clerk	35	18
Certificate of judge	36	18
Reasons for judgment	37	18
Certificate of clerk	70	35

J. & G. S. Gideon, printers.

United States district court, for the district of Louisiana.

Be it remembered that, on the 13th day of March, A. D. 1846, Joseph Reynes, by his solicitors, Elmore and King, came into the district court of the United States for the district of Louisiana, and filed the following petition, to wit:

To the honorable the district court of the United States, in and for the district of Louisiana.

The petition of Joseph Reynes, who resides in the city of New Orleans, respectfully represents:

That by inheritance, being the sole heir of his father, Joseph Reynes, now deceased, he is the owner of forty thousand arpents of land, situated in what was formerly called, under the Government of the King of Spain, the district of Baton Rouge, four miles and one third south of the boundary line between the then territory of the King of Spain and the territory of the United States of America, being bounded on the north by lands the property of James Jorda, and by property of Manuel de Sanzas, and on the other sides by vacant lands; as will more fully appear by an authentic copy of the original act of sale and grant, by Juan Ventura Morales, commissary of the army, intendant superintendant ad interim for the province of West Florida, minister charged with the final settlement of all affairs relating to the royal treasury of the King of Spain in Louisiana; to the said Joseph Reynes, deceased, and to the documents, plans, and surveys appended to the same; all of which are authentic, and are referred to and made a part of this petition.

Petitioner further alleges that said land is believed to be situated in the parishes of East Feliciana and St. Helena, according to the present territorial divisions of this State.

Petitioner alleges that his said father acquired the said land by purchase and grant from said Juan Ventura Morales, the duly authorized officer and agent of the Government of Spain, the sovereignty over the territory in which the said land is situated at the time of the aforesaid purchase and grant. That said Morales had full authority from the Government of Spain to sell the said land and to grant a good and perfect title thereto.

All of which more fully appears from the annexed documents heretofore annexed, and also from the original grant from Morales, which has been mutilated by robbers, who entered and robbed the dwelling-house of the petitioner. The said original act in the form in which it now exists is hereunto annexed, together with the plan of the original survey.

Petitioner alleges that the survey was made and returned by the duly authorized officers of the Government of Spain, on the 19th day of November, A. D. 1803, and that on the 31st day of December, A. D. 1803, the money was paid by his said father to the Government of Spain for the land; and that the above mentioned grant was made to his father on the 2d day of January, A. D. 1804.

That at the date of the said sale and grant to his father, he was a resident of the province of Louisiana. That the said grant was protected by the treaty between the United States and the French Republic of the 30th day of April, 1803. And that said grant might have been perfected into a complete title under and in conformity to the laws, usages, and customs of the Government of Spain, had not the sovereignty of the country been transferred to the United States.

Petitioner further alleges that the said grant did convey to his said father a full and complete title to the said land, under the laws, customs, and usages of the Government of Spain.

Petitioner alleges that his cla m to the above mentioned land was presented to the commissioner of the United States for confirmation, and the same was refused, as will be more fully seen by reference to the report of James O. Cosby, the said commissioner, to be found in the 18th volume of the American State papers, at pages 59 and 66.

That the United States Government has refused, and still refuses, to recognise and confirm the said claim, and has asserted a claim to the same. And that various persons have pretended to set up claims to said land adverse to the rights of the petitioner, to wit, the following persons: L. Saunders, M. Harris, H. Hardesty, Ira Bowman, John Morgan, Josiah Benton, Z. S. Lyons, and Henry Hawford.

Wherefore petitioner prays, that the district attorney of the United States, in behalf of the United States, and the said L. Saunders, M. Harris, H. Hardesty, Ira Bowman, John Morgan, Josiah Benton, Z. S. Lyons, and Henry Hawford, be cited to answer this petition, and that after all due proceedings had, the validity of petitioner's claim be inquired into, and that he be decreed to be the true and lawful owner of the said forty thousand arpents of land. And that for so much of said land as shall be ascertained to have been sold by the United States, the petitioner shall be allowed a like quantity of the public lands belonging to the Government of the United States, as provided for by law, and for all other relief in the premises, &c., &c., &c.

(Signed,) ELMORE & KING,
Solicitors for c mplainant.

Joseph Reynes, being duly sworn, deposeth that the allegations of the above petition are true.

(Signed,) REYNES.

Sworn to and subscribed before me, this 13th of March, 1846.

(Signed,) L. E. SIMONDS,
Deputy Clerk.

I hereby accept service of the within petition, and waive citation.

(Signed) L. SAUNDERS,
M. HARRIS,
H. HARDESTY,
IRA BOWMAN,
JOHN MORGAN,
JOSIAH BENTON.
Z. S. LYONS,
HY. HAWFORD,
S. W. DOWNS,
U. S. att'y, district of Louisiana.

On the 2d day of May, 1846, the following answer was filed, to wit:

District court of the United States:

JOSEPH REYNES, }
vs. }
UNITED STATES. }

The defendants in this cause, by their attorney, S. W. Downs, for answer deny all and singular the facts and allegations in the plaintiff's petition contained, and will, on the trial of the case, require strict and legal proof of the same; the heirship of the plaintiff, to the person to whom the grant purports to have been made, is specially denied; and pray the judgment of the court on this their answer, and that the suit may be dismissed at the cost of the plaintiff.

(Signed,) S. W. DOWNS,
U. S. attorney, district of Louisiana.

Entry upon the minutes.

MONDAY, *May* 4, 1846.

JOSEPH REYNES, }
vs. }
THE UNITED STATES. }

Fixed for trial, by the United States district attorney, for the 27th instant.

Entry upon the minutes.

WEDNESDAY, *May* 27, 1846.

JOSEPH REYNES, }
vs. }
THE UNITED STATES. }

This cause being fixed for trial for this day, and the judge being engaged in a trial in the circuit court, it is ordered that this cause be continued.

Entry upon the minutes.

MONDAY, *June* 1st, 1846.

JOSEPH REYNES, }
vs. }
THE UNITED STATES. }

Fixed for trial, by the United States district attorney, for the 17th instant.

Entry upon the minutes.

WEDNESDAY, *June* 17th, 1846.

JOSEPH REYNES,
vs.
THE UNITED STATES.

On motion of W. W. King, of counsel for petitioner, it is ordered that the parties be allowed to take testimony in this cause before N. R. Jennings, commissioner; and it is further ordered, that this cause be continued.

JOSEPH REYNES,
vs.
THE UNITED STATES.

On motion of W. W. King, of counsel for petitioner, and on showing to the court that the defendants, L. Saunders, M. Harris, H. Hardesty, Ira Bowman, John Morgan, Josiah Benton, Z. S. Lyons, and Henry Hawford, have accepted service of the petition, and waived citation in this cause, and that they have failed to enter their appearances, and to plead, answer, or demur to the petition, though the time allowed therefor by the rules of court has elapsed; it is therefore ordered, that the petition be taken *pro confesso* as to said defendants.

Entry upon the minutes.

THURSDAY, *June* 28th, 1846.

JOSEPH REYNES,
vs.
THE UNITED STATES et als.

Now appeared, in open court, W. W. King, counsel for petitioner, and S. W. Downs, United States attorney, and submitted this cause to the court, upon written argument on behalf of petitioner, and oral argument on behalf of the respondent.

Document B filed March 13, 1846, and offered in evidence June 25, 1846, by plaintiffs.

Notice No. , to James O. Cosby, commissioner of land claims west of Pearl river.

SIR: I claim, as agent for Joseph Reynes, 40,000 arpens of land, situated in the parishes of Feliciana and St. Helena, in virtue of a complete Spanish grant dated 2d of January, 1804; plat and certificate of the survey of the same by Y. S. Pintado, deputy surveyor, and certified Charles Trudeau, surveyor general, dated 14th November, 1803, in favor of Joseph Reynes; this land has never been inhabited or cultivated.

Signed, FELIX DE ARMAS, *Agent*.

Register's office.

I, Richmond Dennis, register of the land office at Greensburg, Louisiana, do hereby certify, that the above notice of claim is a true copy from page 46, of book E, No. 1, in this office.

Given under my hand, officially, at the land office at Greensburg, Louisiana, on this the 31st day of October, A. D. 1845.

Signed, RICHMOND DENNIS, *Register*.

[For plat see original.]

Written evidence of notario No. —.

Spanish Government to Joseph Reynes—letters patent, 40,000 arpens, dated 2d of January, 1804.

(Copia.)

Don Vicente Sebastian Pintado, capitan de cavalleria de melicias y segundo agrimensor de esta provincia, certifico que fue medido y lindado, á favor de Don Joseph Reynes, un terreno de quarenta mil arpanes planos, medidos á la percha de la ciudad de Paris, de diez y ocho pies de la misma ciudad, contando cien perchas planos por arpan, segun costumbre agraria en esta provincia, cuyo terreno situado á quatro millas y tercio, al sur de la linea de limite entre estos dominios de S. M. (que Dios guarde) y los Estados Unidos de America, linda por la parte del norte ó septentrional con tierras de Don Jaimé Jorda y Don Manuel Sanzos, y por los demas lados con tierras vacantes, pasando por el centro del terreno el rio Comit y un brazo de el vulgarmente llamado Arroyo del Carnival, como todo se demuesna claramente en el plano que antecede ó anexo y firmado por mi, en el que va figurando el terreno, con las dimensiones de sus lados en perchas lineales de Paris, las direcciones de los limites segun la brujula, la declinacion ó variacion nord-este de esta, los arboles y masones que serven de linderos y los demas confines naturales y artificiales. Los dichos quarenta mil arpanes, que el interesado compra de la real hacienda, fueron mandados á medir y estimar por auto ó despacho de la Yntendencia General de esta provincia, con fecha primero de Septiembre ultimo, librado el Señor Don Carlos de Grandpré, coronel de los reales exercitos, Governador politico y militar del puesto de Baton Rouge y sus dependencias, y subdelegado de la dicha Yntendencia General por cuyo Señor me fue notificado dicho despacho y contenido; y haviendo nombrado el referido Señor Governador y subdelegado por peritos á Don Pedro Allen y Don Felix Bernardo Dumontier, y lo respectivo á la real hacienda, y el apoderado del interesado que lo es Dn. Antonio Gras, á Don Philipe Hickey, y Don Bernardo Dubrocar, estos y aquillos, con asistencia de los testigos Don Thomas Valentine Dalton y Juan Poret, evaluaron dicho terreno en el precio y suma de seis mil pesos fuertes, ó á razon de quince sueldos por cada arpan plano, lo que vesto por el apoderado de la parte se confirmo y recivio como recive comprado dicho terreno, y de él se dio por entregado á su voluntad, y lo firmo con

los dichos estimadores y testigos, en Baton Rouge, á diez y nueve dias del mes de Noviembre, de mil ocho cientos y tres años.

(Así firmado) ANTONIO GRÁS,
VICENTE SEBASTIAN PINTADO,
PEDRO ALLEN,
FELIX BERNARDO DUMONTIER,
PHILIP HICKEY,
BERN'O DUBROCAR,
V. S. DALTON, Y
JUAN PORET.

Y mas abaxo esta: En la oficina de agrimensura general se tomo razon del presente plano y relacion, sentado en el libro D, No. 4 folio, y vo. 84, al plano No. 1672. Diez de Deciembre, de mil ocho cientos y tres años. Firmado yo el presente agrimensor g'ral.

Certifico la presente copia conforme á su original, que se halla agregado en los expedientes del asunto, de que doy la presente en virtud del decreto del Señor Yntendente General, en fecha seis del presente mes de Decembre, fecha ut supra.

CARLOS TRUDEAU, *A. g'ral.*

Don Juan Ventura Morales, contador de exercito yntendente y superintendente interino de la provincia de la Florida occidental, ministro encargado para el arreglo y conclusion de los asuntos de real hacienda en esta de la Louisiana.

Por quanto habiendose presentado en este tribunal Don José Reynes, vecino y del comercio de esta ciudad, solicitando comprar á la real hacienda quarenta mil arpanes de tierra planos, de las que habia vacantes y realengas en distrito de Baton Rouge, cuyo valor á justa tapacion ofrecio pagor de cantador en certificaciones de creditos tirados par este ministerio de real hacienda, mande que por secretaria se pusiese copia certificada del officio, dirigido por esta Yntendencia á los señores comisarios de la entrega de la provincia, á consequencia de la solicitud echa por Don Thomas Urquehart, y dela repuesta que hicieron, y que se diese vista al señor fiscal que evaquados estos pasos, y no resultando contradiccion á la solicitud de la repuesta dada por el citado señor fiscal, que opinio favorable, y prediendo se pasan orden al Señor Coronel Dn. Carlos de Grandpré, Governador y subdelegado de real hacienda en Baton Rouge, para que nombrase dos habitantes expertos, que en calidad de estimadores, con otros dos que senalase el comprador, y con dos testigos de asistencia, se procediese al justiprecio apeo, y deslinde de los quarenta mil arpanes de tierra, y que remitiese las diligencias para lo demas propuesto que en seguida, mande poner testimonio del decreto, con que se pasó á la consulta del señor auditor de guiña el expediente promovido por el indicado Urquhart, sobre equal solicitud y del dictamen que extenaio en consequencia lo que verificado provey auto, mandando librar despacha al enunciado Señor Governador y subdelegado, como propuso el señor fiscal, y para los efectos que determino, como efectivamente se verifico, que en virtud del se dio curso á las diligencias y desde

luego se midieron, del lindaron, apearon, y amojonaron los quarenta mil arpanes de tierra planos, solicitados por el referido Don José Reynes, que resultaron en un cuerpo cituados que estan en el districto de Baton Rouge, y en el parage que se nominara, con exprecion de linderos, Riembos, y colocacion para la intelligencia los que se tazcaron en seis mil pesos fuertes, á razon de quince sueldos por cada arpan plano, de que mande dar vista al señor fiscal, quien conformandose con la estimacion expuso que enterando Dn. José Reynes en caxas reales los citados seis mil pesos, á que asendian los quarenta mil arpanes de tierra, que constaban del plano figurativ el derecho de media anata, y diez y ocho por ciento de conducion á los Reynes de Castilla, se la librase el titulo de propriedad anecerba de provier lo que correspondiese, mande pasar el expediente al agrimensor general Don Carlos Trudeau, para que examinase las operaciones del particular Dn. Vicente Pintado, y que hallandollas conformes tomase razon en sus libros del plano que contema los quarenta mil arpentes de tierra, solicitados por el citado Reynes, y que provezese del duplicado que debia accompanar este titulo; que verificadas estas diligencias por auto de diez y nueve de Deciembre anterior aprove la estimacion hecha de los enunciados quarenta mil arpanes de tierra planos, y mandé que pasase el expediente á los señores ministros de real hacienda, para que formasen la liquidacion del valor y que constando haberese hecho el entero en arcas reales, de todo lo que resultare á favor de la real hacienda en certificaciones de credito, como ofrecio hacerbo el referido Dn. José Reynes, con lo correspondente á la media anata y conduccion, se le despachase el titulo de propriedad en forma que por contra de pago despachada por el ministerio de real hacienda, con fecha trenta y uno del citado Deciembre, que obreé en el expediente, y á que me remito consta que el nominado Dn. José Reynes entero en caxas reales quarenta y nueve mil quatro cientos diez y seis reales de plata; los quarenta y ocho mil por el importe de los quarenta mil arpanes de tierra planos, á quince sueldos cada uno, y los mil quatro cientos diez y seis reales restantes por el dos y medio por ciento de media annata, y diez y ocho por ciento de su conduccion á España; en cuyo virtud y constando del plano y diligencias de media de que há proveydo el agrimensor general Dn. Carlos Trudeau, distinguido con el No. 1672, que los referidos quarenta mil arpanes de tierra planos estan cituados en el distrito de Baton Rouge, á quatro millas y tercio al sur de la linea de limite entre los dominios de S. M. C., mi señor, y los Estados Unidos de America, lindando por el norte ó septentrional con tierras de Dn. Jaymé Jorda, capt. de exercito, y el capitan de equal clase Dn. Manuel de Sanzos, y por los demas lados con tierras vacantes, pasando por el centro de dichos quarenta mil arpanes el rio Comite, y un brazo de él vulgarmente llamado Arroyo del Canaveral. Por tanto, y usando de las facultades que mi son conferidas, concedo á titulo de venta al nominado Dn. José Reynes los quarenta mil arpanes de tierra planos, que ha solicitado, en el parage y distrito de Baton Rouge, donde á su instancia se han medido des lindado y apeado vaxo las linderos mencionados segun el plano y medido citado, el que para la inteligencia

y conocimento de lo expuesto, rumbos, distancias y lugar en que se hallan colocados se unira á este titulo; mediante lo qual le importe entero y directo dominio de dichos quarenta mil arpanes, para que como suyos proprios y como tierra comprada y pagada á la real hacienda, la posea, cultiva, y disponga de ella á su voluntad, y le doy poder para que aprehenda su posecion, y en la que desde luego le pongo y amparo sin perjuicio de tercero que messor derecho tenga. En fé de lo qual, mande despachar el presente, firmado de mi mano, sellado con él de mis armas, y refrendado del infrascripto escribano de real hacienda, quien como la contaduria principal tomara la razon.

Dado en la Nueva Orleans, á dos de Enero, de mil ocho cientos [L. S.] quatro.

(Signed) JUAN VENTURA MORALES,
Por man'do del S'or Intendente.

Queda tomado razon del titulo antecedente desde b'ta, de 137, hasta la 40, del libro, destinado á el efecto para las de esta clace.

(Signed) CARLOS XIMENEZ.

Tomase razon en la contaduria principal de exercito y real hacienda del ministerio en nuestra cargo, al folio 38, y b'ta en el libro destinado á este fin. Nueva Orleans, veinte y seite de Enero, de mil ocho cientos quatro.

(Signed) GILBERTO LEONARD.
MANUEL ARMEREZ.

REGISTER'S OFFICE.

I, Richmond Dennis, register of the land office at Greensburg, Louisiana, do hereby certify, that the foregoing certificate of survey, the grant or act of sale, dated January second, eighteen hundred and four, in favor of Joseph Reynes, also the certificates of Carlos Ximenez and Manuel Armerez, are true copies from record book E, number 1, and which forms a part of the records of this office.

Given under my hand, at the land office at Greensburg, Louisiana, on this the thirty-first day of October, eighteen hundred and forty-five.

(Signed) RICHMOND DENNIS, *Register*.

Translation of document A, filed June 19th, 1846, and offered in evidance June 25th, 1846, by pl'ffs.

I, Don Vincente Sebastian Pintado, captain of militia cavalry and deputy surveyor of this province, do hereby certify, that there has been measured and the boundaries marked of a tract of land for Don José Reynes, containing 40,000 superficial arpents, measured by the perch of the city of Paris, of 18 feet of said city, calculating 100 superficial perches to the arpent, according to the agrarian custom of this province, which tract is situated 4½ miles to the south of the boundary line between the domains of his Majesty and the United States of America, bounded on the north by lands belonging to Don Jame Jorda, Don Manuel de Sanzos, and on all the other sides by vacant lands, the river Comite and a branch of

said river, commonly called Canaveral creek, passing in the centre of said tract, all of which are clearly described in the preceding plan signed by me, in which plan said tract is represented with the dimensions of its boundaries in lineal perches of Paris, the directions of the boundaries by the compass, the declination or variation of which is in the direction northeast, the trees and mounds intended as land-marks, and all other natural and artificial limits. The said 40,000 arpents were bought by the interested party from the royal treasury, and were ordered to be measured and appraised by a decree of the general intendancy of this province, under date of the 1st of September last, sent to Carlos de Grandpré, colonel of the royal armies, civil and military governor of the post of Baton Rouge and of its dependencies, and sub-delegate of the general intendancy, who notified me of said decree, and of its contents.

And said Excellency, the governor and sub-delegate, having appointed Don Pedro Allen and Don Felix Bernardo Dumontier appraisers on behalf of the Government, and the agent of the party, Don Antonio Gras, having named Don Philipe Hickey and Don Bernardo Dubrocar, said gentlemen being assisted by two witnesses, to wit, Don Thomas Valentin Dalton and Juan Poret, appraised the aforesaid tract at the price and sum of six thousand dollars, or at the rate of 15 cents per superficial arpent; the agent of the party being informed of said appraisement, consented and approved it, receiving said tract as purchased, acknowledging the delivery thereof; and, with the appraisers and witnesses, signed these presents in Baton Rouge, on the 19th day of the month of November, of the year 1803.

(Signed,) ANTONIO GRASS,
VINCENTE SEBASTIAN PINTADO,
PEDRO ALLEN,
FELIX BERNARDO DUMONTIER,
PHILIP HICKEY,
BERNARDO DUBROCAR,
VN. DALTON,
JUAN PORET.

The foregoing plan and explanations, or description, have been registered, in the office of general measuration, in book D, No. 4, folio 84, and the plan numbering 1,672.

10 December, 1803—Signed by me as surveyor general.

I certify that the foregoing is a correct copy of the original filed with the documents of the case, and I give the present in virtue of a decree from the intendant general, dated 6th of the present month of December, dated as above.

(Signed,) CARLOS TRUDEAU,
Surveyor General.

Translation of document B, offered in evidence by plaintiff.

Don Juan Ventura Morales (contador de exercito,) comptroller for the

army, intendant and superintendent pro temp. of the province of West Florida, minister commissioned with the adjustment and final settlement of the affairs of the royal hacienda, (domains,) in the province of Louisiana. Whereas Don José Reynes, an inhabitant and merchant of this city, has presented himself before this tribunal, soliciting to purchase from the royal treasury 40,000 superficial arpents of land, of those vacant and belonging to the crown, the value of which he offers to pay, under appraisement, in letters of credit issued by the department of the royal treasury, I ordered, in consequence of said demand, that a certified copy should be furnished by the secretary, of the official letter addressed by this intendancy to the commissioners appointed for the transfer of this province, on the subject of a petition presented by Don Thomas Urquhart, and of the answer made by said commissioners; and that these be submitted to the Sen'r Fiscal, (solicitor of the crown.) Those formalities having been fulfilled, and no opposition being made to said petition from the answer given by said Sen'r Fiscal, whose opinion was favorable thereto, and who recommended that an order be issued to Col. Carlos de Grandpré, governor and sub-delegate of the royal treasury in Baton Rouge, to appoint two citizens of experience, who in the character of appraisers, with two others whom the purchaser shall designate, and two assistant witnesses, they should proceed to the appraisement, survey, and mark the limits of the 40,000 arpents of land, and make a return of the proceedings in order to carry out the object contemplated. I further ordered to be furnished a certified copy of the order under which the auditor of war was consulted on the proceedings had in the case of the aforesaid Urquhart, with regard to a similar application, and of the opinion which he (the auditor of war) expressed; and, this having been done, I approved the same, directing an order to be sent to the said governor and sub-delegate of the royal treasury, as recommended by the Sen'r Fiscal, and for the purposes which he determined, which was accordingly done; and, in virtue of said order, the operations of survey were performed, and forthwith were measured, surveyed, the limits defined, and marked with stakes, of the 40,000 superficial arpents of land solicited by Don José Reynes; all of which land is in one body or tract, situated in the district of Baton Rouge, and in the spot which will be named hereafter, with a description of the boundaries, by the compass, and situation. This tract of land was valued at $6,000, or at the rate of 15 cents per superficial arpent; which appraisement I ordered to be submitted to the Sen'r Fiscal, who approved it, and decided that, on payment being made by Don José Reynes in the royal coffers, of said sum of $6,000, the same being the value of the land, say 40,000 superficial arpents, according to the figurative plan, also the payment of the duty of (media anata)—(half yearly tribute)—and 18 per cent. for the transportation of this tribute to the kingdom of Castilla, a title of property should be given to him. That, agreeably and in conformity with this order of the Sen'r Fiscal, I ordered that the surveyor general, Don Carlos Trudeau, should examine the operations, or proceedings of survey, made by Don Vincente Pintado; and, if he

found them correct, that he should record in his books the plan representing the 40,000 arpents of land solicited by the aforesaid Reynes, and furnish a copy of said plan to accompany the title. That, these formalities having been complied with, I approved, by an act bearing date of 19th of December last, the valuation made of said 40,000 superficial arpents, and ordered that the documents should be sent to the minister of the royal treasury for a liquidation of the value of the land; and, on its being shown that the amount due to the royal treasury had been entirely paid in the royal coffers, in certificates of credit as proposed by said Don José Reynes, also with the sum for the (media anata) half yearly tribute to the King, and for its transportation to Spain, that then a title of property, in due form, should be given to the party. From the receipt of payment given by the ministry of the royal treasury, bearing date 31st of December last, which receipt is with the proceedings to which I refer, it appears that the said Don José Reynes did pay in the royal coffers forty-nine thousand four hundred and sixteen reales (bits) of silver: 48,000 for the price of the land, at 15 cents per arpent, and the balance, 1,416 reales, for the 2½ per cent. for the half yearly tribute, and 18 per cent. for the transportation of tribute to Spain; in consequence of which, and it being evident, from the plan and proceedings of survey furnished by the surveyor general, Don Carlos Trudeau, bearing No. 1,672, that the said 40,000 superficial arpents are situated in the district of Baton Rouge, at four miles and one-third south of the boundary line between the domains of his Catholic Majesty and the United States of America, bounded on the north by lands belonging to Jayme Jorda, a captain of the army, and those of an officer of the same grade, Don Manuel de Sanzos; and on the other sides by vacant lands, the river Comite passing through the center of the said 40,000 arpents, which are also intersected by a branch of said river commonly called the "Canaveral."

Therefore, and agreeably to the power delegated to me, I do hereby grant, under title of sale, to the above named Don José Reynes, the 40,000 superficial arpents of land which he petitioned for, in the spot, and within the district of Baton Rouge, where they have at his instance been measured, bounded, and surveyed, under the aforesaid limits, as represented by the plan and measurement above cited; all of which, for the better understanding of what is here set forth, as well as the directions, distances, and localities, shall be annexed to this title; and I impart to him (Don José Reynes) entire and clear dominion over said 40,000 arpents of land, that, as his own lands, from having purchased and paid for them to the royal treasury, he may possess, cultivate, and dispose of them at his pleasure; and I do authorize him to take possession of them; in which possession I do hereby place him without prejudice to any third person who might have a better right.

In testimony whereof, I have ordered these presents to be delivered under my signature, sealed with my coat of arms, and countersigned by the undersigned, notary of the royal treasury, who, as well as the principal comptroller, will register this act.

Given in New Orleans, on the 2d day of January, 1804.
(Signed,) JUAN VENTURA MORALES.

By order of the Sen'r Intendant.
CARLOS XIMINES.

The above title has been registered in folio 37 to 40, of the book under my charge destined to that effect, and for titles of said class.
(Signed,) CARLOS XIMENES.

Registered in the office of the principal comptroller for the army, and also in the office of the royal treasury, (both of which are under our charge,) at page 38 of the book destined to that effect and purpose.
(Signed,) GILBERTO LEONARD,
MANUEL ARMIRES.

And, on the 18th day of June, A. D. 1846, the following examination took place before N. R. Jennings, United States commissioner, and considered in evidence June 25th, 1846.

CLERK'S OFFICE, U. S. DISTRICT COURT,
District of Louisiana:

JUNE 18th, 1846.

JOSEPH REYNES, }
vs. }
THE UNITED STATES. }

In the above entitled cause, the following named witnesses appeared before me, N. R. Jennings, commissioner, by virtue of an order of court duly entered, directing evidence to be taken before me in the said cause.

Accordingly, the hour of 9 A. M., June 18th, 1846, being appointed for the taking said evidence:

King, esq., of counsel for the plaintiff, appeared, and the U. S. D. attorney, for the United States, when

Etienne Mazureau, witness for the plaintiff, being duly sworn states, that he has examined the signatures to the original document, marked A, filed with the petition in this suit; that he is well acquainted with the handwriting of Juan Ventura Morales, that he has seen him sign his name hundreds of times, that he knows the signature attached to the said document, which is slightly mutilated, to be the genuine signature of said Morales; that he is also acquainted with the handwriting of Carlos Ximenes, who was the clerk (escrivano) of the tribunal of the Intendant Morales at the date of the said document, "to wit," the 2d day of January, 1804; that he knows the signature of said Ximenes, attached to said document, to be his true and genuine signature. That he is also acquainted with the signature of Manuel Armires; that he was the contador principal of Louisiana, that he knows the signature of said Armires as partially mutilated attached to the aforesaid document A, to be his true and genuine signature. That he is well acquainted with the handwriting of Carlos Trudeau, that he has often seen him

write ; that he knows his signature attached to the report of the survey filed in document A, with the original title, to be the true and genuine signature of the said Trudeau. That he knows the signature attached to the plan of survey annexed to the original title in document A, to be the signature of the said Trudeau, and the certificate to be his own handwriting ; that the signo, otherwise paraph or flourish, which accompanies the signature of Ximenes on the last page, and also to be found on every alternate page of the original title, and also to report of the Surveyor Trudeau, and also on the plan of the survey, is what is called the signo, which the said Ximenes, in his official capacity, was bound to accompany all these signatures with ; that signo was according to the laws of the country at that period affixed to those various parts of said document, to shew that said document in all its parts was genuine, and to prevent alterations. Witness has no doubt of the genuineness of the seal, attached to the title, as being the seal of the intendancy ; that he has had knowledge of this title, marked A, for more than forty years, and knows it to be genuine ; that he has seen the said title, and has had it in his possession before it was mutilated ; that he recognises the present document, portions of which are mutilated, to be the same formerly in his possession. Being asked how the title happened to be mutilated, witness says, that about the month of November, 1834, one day early in the morning, witness was informed that Mr. Reynes, the present plaintiff, who then lived at his sawmill about two miles below the city, had been robbed in the night by persons who had broken open his doors and the armoir in his bed-room; witness repaired immediately to the spot, where he found the said Reynes and his wife in a state of stupefaction at their misfortune, witness attempted to comfort Mr. Reynes, and he complained of having lost very precious articles, and among them almost all his title papers, and shewed to witness the document in its present mutilated condition, which he had picked up with several other papers in his garden. A negro slave was immediately after arrested by one of the police officers, and witness has assisted at the examination of that negro who confessed his crime, at the same time implicating one of the slaves of Mr. Reynes. Witness was the attorney general of the State of Louisiana at the time. Witness was well acquainted with Joseph Reynes, senior, the grantee named in title in this suit. That the said grantee was a resident of the State of Louisiana, then a province of Spain, in the years 1803 and 1804, and had been a resident a long time before. That the present plaintiff is the only son and sole heir of Joseph Reynes, senior, now deceased.

Witness states that Juan Ventura Morales was the intendant of the province of Louisiana, under the government of Spain, during the years 1803 and 1804, and that he was also intendant under the said government of the province of West Florida. That the province of West Florida remained under the government of Spain until the time of the insurrection at Baton Rouge, headed by General Thomas, two of the Kempers, and others; after which the parishes now embraced in Louisiana were taken into the possession of the American Government. The

document marked A is not properly a grant, but a sale for a valuable consideration. Witness further states, that to his knowledge the father of the present plaintiff, as well as the plaintiff himself, paid the State taxes on the lands, the subject of the present suit; which taxes the plaintiff ceased to pay when advised so to do by witness, which was the time of the decision of the case by the Supreme Court of Foster and Elam.

Witness states that it was the habit, under the authority of the Spanish government, to issue duplicate original titles, one of which was retained by the government and the other delivered to the party to whom the title was made. That Trudeau, under the laws which then governed the province of Louisiana and West Florida, was authorized to authenticate copies of plans deposited in his office by his certificate. That Sebastian Pintado was his deputy surveyor, under the title of second surveyor of the province, and was a sworn officer of the government.

All the orders of survey issued from the intendancy were directed to the surveyor general, who resided in the city of New Orleans, and who used to send them to the subordinate surveyors in the neighborhood of whose residence the lands to be surveyed laid. The operations then made by these subordinate surveyors were made to the said surveyor general; they were certified to him by the subordinate surveyors, and he certified them to the intendant. Witness further states, that the applicants paid the expenses of making the survey, and all the expenses, fees, &c., &c., attending the same.

(Signed,) MAZUREAU.

The district attorney having no cross interrogatories to propound to the witness, the deposition was read over by me to the witness; the same was then signed by him, and the examination of witnesses was continued, to be resumed this afternoon at 5 o'clock, P. M.

(Signed,) N. R. JENNINGS, *Com'r*.

Examination resumed at 5 o'clock, P. M., June 18th, 1846.

A. Mazureau, witness for the plaintiff, being duly sworn, deposes and states:

That he knew Joseph Reynes, senior, very well, who is now dead. That Joseph Reynes, the plaintiff in this suit, is his only son and heir; states that Joseph Reynes, senior, resided in this State for a very long time, as far back as witness can recollect. Witness knows that Joseph Reynes, the present plaintiff, was robbed some twelve or fourteen years ago, by which many of his papers were lost and destroyed; that he went into the place where the said plaintiff kept his papers, and he saw that a great many of them were scattered, and many were also destroyed.

(Signed,) A. MAZUREAU.

All cross interrogatories being waived on the part of the district attorney, the deposition was read over to the witness, and then signed by him before me, June 18th, 1846.

(Signed,) N. R. JENNINGS, *Com'r*.

Examination resumed, this 19th day of June, 1846.

Louis Bouligny, witness for the plaintiff, being duly sworn, states, that he is very well acquainted with the signature of Juan Ventura Morales; that he knew him personally, and has received many letters from him. Being shown the signature to the original title in document marked A, he recognises it as the genuine signature of the said Juan Ventura Morales. Being shown the signatures of Carlos Ximines, attached to the said document, states that he knew the said Ximines well, that he died about the year 1806 or '8, and that he knows his handwriting, and recognises his signature to be true and genuine. Being shown the signature of Manuel Armires, states, that he knew Armires well, that he was an officer of the treasury; that he knows his handwriting well, and recognises the signature attached to the said document A to be the true and genuine signature of Manuel Armires; recognises also the signature, to the said document, of Carlos Trudeau, to be his true and genuine signature; that the report, also in said document, is in his handwriting; and the certificate and signature on the plan of survey are also in the handwriting of said Trudeau; that the said Trudeau was the surveyor general of the Spanish Government.

(Signed,) L. BOULIGNY.

The district attorney being present declined propounding any cross interrogatories; the deposition being then read over to the witness, it was signed by him in my presence.

(Signed,) N. R. JENNINGS, *Com'r*.

Judgment.

UNITED STATES DISTRICT COURT,
District of Louisiana:

NEW ORLEANS, *November 3d*, 1846.

Present the hon. T. H. McCaleb:

JOSEPH REYNES,
vs.
THE UNITED STATES and others. } No. 10.

The court having heretofore taken this cause under consideration, and having maturely considered the same, doth now order, adjudge, and decree, that the petitioner recover the land claimed in his petition, and described in the survey of Pintado, revised by Trudeau, appended thereto; and if it should happen that any portion of said land has been sold or otherwise disposed of by the United States, it is ordered that for such portions the petitioner have the right to enter other lands belonging to the United States at any land office in Louisiana, according to the provisions of the eleventh section of the act of 1824. And it appearing by reference to the order of this court, dated the seventeenth day of June, 1846, that petitioner's petition has been heretofore taken *pro confesso*, against L. Saunders, M. Harris, H. Hardesty, Ira Bowman, John Mor-

gan, Josiah Benton, Z. S. Lyons, and Henry Hawford, and the said defendants not having entered their names to the said petition, or taken any steps to set aside the said order taking the petition *pro confesso*, it is further ordered and decreed that the petitioner recover the above described land from the said defendants, unless the portions they may claim shall have been sold to them by the Government of the United States, or otherwise disposed of by the said Government to the said defendants; in which event the petitioner is to obtain relief in the manner above pointed out, where the Government of the United States have sold or otherwise disposed of any portion of the land he claims.

Judgment rendered November 3d, 1846; judgment signed November 12th, 1846.

(Signed) THEO. H. McCALEB,
U. S. judge.

Petition of appeal.

JOSEPH REYNES
vs.
THE UNITED STATES.

In the district court of the United States for the district of Louisiana.

The petition of the United States. the defendants in the above named suit, respectfully shows, that it is believed there is error in the judgment rendered against them on the third day of November, 1846, in the matter of Joseph Reynes vs. The United States.

Wherefore, they pray that an appeal may be allowed from said judgment to the Supreme Court of the United States.

(Signed) THOMAS J. DURANT,
Atty. U. S. for La.

Let this petition be filed, and an appeal granted as prayed for, returnable on the

(Signed) THEO. H. McCALEB, *U. S. judge.*

Filed November 13th, 1846.

(Signed) L. E. SIMONDS, *Dep. clk.*

United States district court for the district of Louisiana, to Joseph Reynes, esq., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of February next, pursuant to an order of appeal granted on the 13th day of November, A. D. 1846, in a certain case wherein the United States are appellants, and Joseph Reynes is appellee, to shew cause, if any there be, why the judgment rendered on the third, and signed on the twelfth day of November, 1846, against the said appellants, and in favor of the appellee, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

THEO. H. McCALEB, *U. S. judge.*

Service accepted by the appellee.

ELMORE & KING,
Solicitors for plaintiff.

UNITED STATES DISTRICT COURT,
For the district of Louisiana.
Clerk's office.

I, N. R. Jennings, clerk of the aforesaid court, do hereby certify, that upon the foregoing 35 pages is contained a true and correct transcript of all the documents, evidences, pleadings, process, and other matters, of file and of record, in the suit of Joseph Reynes vs. The United States, numbered ten on the docket of the said court.

In testimony whereof, I have hereunto signed my name, and caused to be affixed the seal of the said court, at the city of [L. S.] New Orleans, this thirteenth day of January, A. D. 1847, and of the independence of the United States of America the 71st year.

N. R. JENNINGS, *Clerk.*

I, Theodore H. McCaleb, judge of the United States district court in and for the district of Louisiana, duly qualified, do hereby certify, that N. R. Jennings, whose signature is hereunto attached, was at the time of so signing his name, and still is, the clerk of the above named court, and that full faith and credit are due, and ought to be given, to all his attestations as such, and that the foregoing is in due form of law.

In testimony whereof, I have hereunto set my hand and seal, at the city of New Orleans, this thirteenth day of January, A. D. 1847.

THEO. H. McCALEB, [L. S.]
U. S. judge

Reasons for judgment.

This suit is instituted in pursuance of the act of Congress, approved June 17th, 1844, entitled "An act to provide for the adjustment of land claims within the States of Missouri, Arkansas, and Louisiana, and in those parts of the States of Mississippi and Alabama south of the thirty-first degree of north latitude, and between the Mississippi and Perdido rivers." This act revives so much of the expired act of the 26th of May, 1824, entitled "An act to enable claimants to land within the State of Missouri and Territory of Arkansas, to institute proceedings to try the validity of their claims," as related to the State of Missouri, and extends its provisions to the States and parts of States above mentioned.

By the authority conferred by these acts of Congress, claimants of land under titles derived from the Spanish, French, or British Governments, have the right to present their petitions to the district court of the United States, setting forth the nature of their claims, and to have their titles adjudicated upon contradictorily with the United States.

The petitioner in this case alleges that, by inheritance, being the sole heir of his father, Joseph Reynes, now deceased, he is the owner of forty thousand arpents of land, situated in what was formerly called, under the government of the king of Spain, the district of Baton Rouge, four miles and one-third south of the boundary line between the then territory of the king of Spain and that of the United States of America.

The land is bounded on the north by land the property of James Jorda, and by property of Manuel de Langos, and on other sides by vacant lands, as will appear by an authentic copy of the original act of sale and grant by Juan Ventura Morales, intendant of the Spanish Government, to the father of the petitioner, and by a plan and survey appended thereto. According to the present territorial divisions of the State, the land is situated in the parishes of East Feliciana and St. Helena.

From the evidence on record, it appears that the order of survey was issued on the 1st of September, 1803; that the survey and appraisement were returned on the 19th of November, 1803; that the price was paid by the grantee on the 31st of December, 1803; and that the grant, or title in form, was signed by Morales on the 2d of January, 1804. This last mentioned document contains a recital of the previous acts and formalities, and concludes by conveying, in clear and unequivocal terms, the ownership of the land in question to the grantee and purchaser.

"Therefore, and agreeably to the powers delegated to me," says the grantor, "I do hereby grant, under title of sale, to the above named Don José Reynes, the 40,000 superficial arpents of land which he petitioned for, on the spot, and within the district of Baton Rouge, where they have, at his instance, been measured, bounded, and surveyed, under the aforesaid limits, as represented by the plan and measurement above cited; all of which, for the better understanding of what is here set forth, as well as the directions, distances, and location, shall be annexed to this title, and impart to him, Don José Reynes, entire and clear dominion over said forty thousand arpents of land; that, as his own lands, from having purchased and paid for them to the royal treasury, he may possess, cultivate, and dispose of them at his pleasure; and I do authorize him to take possession of them; in which possession I do hereby place him, without prejudice to any third person who might have a better right."

It appears by the certificate of Gilbert Leonard and Manuel Armirez, that this grant was duly registered in the office of the comptroller of the army, and in the office of the royal treasury; both of which were under their charge. It was subsequently recorded in the land office established by Congress, in the district where the land is situated. The original appears before the court in a mutilated state.

The petitioner declares, under oath, and proves by the deposition of Mr. Mazureau, that it was so mutilated by robbers, who entered and robbed his dwelling house. The genuine signature of the intendant Morales, is, however, plainly visible, and all difficulty arising from its otherwise imperfect state, has been entirely obviated by the production of a certified copy from the land office at Greensburg, in the parish of St. Helena; which, by the third section of the act of 1824, is expressly made evidence in actions of this nature.

No question was raised by the district attorney in regard to the authenticity and regularity of the title in point of form. Its confirmation by this court is resisted, however, upon the ground, that the authorities

of Spain had no right to make grants of land within the district where the land in question is situated, at the time the power in this case was exercised. And it is contended that the decisions of the Supreme Court of the United States, rendered in various cases of appeal from this district, are to be regarded as res judicata, in their application to all grants made by Spain subsequent to the treaty of St. Ildefonso, of October 1st, 1800, within that district of country lying between the Mississippi and Perdido rivers, south of the thirty-first degree of north latitude, and north of the lakes Maurepas and Ponchartrain. The territory here alluded to has for many years, prior to the ratification of the treaty of 1819, commonly known as the Florida treaty, been the subject of dispute between the Governments of the United States and Spain, and gave rise to a correspondence between the diplomatic representatives of the respective countries, characterized by learning and ability rarely, if ever, equalled.

The claim of the United States was founded upon the treaty of St. Ildephonso, of 1800, by which Spain had retroceded to France the colony or province of Louisiana, which our Government contended extended east of the Mississippi river as far as the Perdido; and, of course, included the disputed territory. If this were true, it followed that by the treaty of cession of the 30th of April, 1803, by which France ceded Louisiana to the United States, the right of the latter to the territory in question was finally and fully established. But the claim of the United States was promptly resisted by the ministers and colonial authorities of Spain, upon the ground that this territory formed part of her province of West Florida, and was never intended to be ceded as part of Louisiana to France, by the treaty of St. Ildefonso, of 1800, and therefore never passed under the sovereignty of the United States by the treaty of 1803.

I do not deem it necessary to enter again into the merits of this controversy; for, in the language of Chief Justice Marshall, in the case of Foster & Elam vs. Neilson, (2d Peters, 306,) "every topic which relates to it has been completely exhausted, and the court, by reasoning on the subject, could only repeat what is familiar to all." Whatever may have been the rights of Spain, it is clear that they have been uniformly denied by the United States; and it is not the province of their courts to adopt a rule which may counteract the will of the legislative department of the Government, if that will has been clearly expressed. In a controversy between two nations concerning national boundary, it is scarcely possible that the courts of either should refuse to abide by the measures adopted by its own government. There being no common tribunal to decide between them, each determines for itself on its own rights; and if they cannot adjust their differences peaceably, the right remains with the strongest. The judiciary is not that department of the government to which the assertion of its interest against foreign powers is confided; and its duty commonly is to decide upon individual rights, according to those principles which the political departments of the nation have established. If the course of the nation has been a

plain one, its courts would hesitate to pronounce it erroneous. And however individual judges might construe the treaty of St. Ildephonso, it is the province of the court to conform its decisions to the will of the legislature, if that will has been clearly expressed." (2 Peters, 307.)

The question of disputed boundary does not arise in this cause. There is nothing in the law of 1824 which authorizes this court to enter into an examination of the diplomatic history of the cession of Louisiana, for the purpose of deciding upon the respective rights of the United States and Spain under the treaty of St. Ildephonso. The court is bound now, as much as the Supreme Court of the United States were bound, when they were called upon to decide the cases of Foster & Elam vs. Neilson, (2 Peters,) and Garcia vs. Lee, (10 Peters,) to regard the territory between the Mississippi and Perdido as part of Louisiana, ceded by France to the United States by the treaty of 1803.

The stipulations of the treaty of the 22d of February, 1819, by which Spain ceded the Floridas to the United States, can have no bearing upon the rights of the petitioner in this cause. Those rights must depend upon the act of 1824; and if, with the aid of the extraordinary powers conferred by that act upon this tribunal, they cannot be sustained, the petitioner is without a remedy. So far is that act, either in terms or by implication, from authorizing this court to regard the question of disputed boundary as an open question, it is clear, to my mind, that the course of the political department, as indicated by the act, is precisely that which was indicated in other acts of Congress, asserting jurisdiction over the territory between the Mississippi and Perdido, in opposition to the pretensions of Spain. The position of the claimant in this suit is precisely that which was occupied by all claimants under grants from the Governments of France and Spain, who were residents in the State of Missouri, and who were authorized by this very act of 1824 to present their titles for adjudication upon certain principles, and by certain rules therein prescribed. The territory now included within the limits of the State of Missouri, was like portions of the States of Louisiana, Mississippi, and Alabama, lying south of the 31st degree of north latitude, a part of the immense territory ceded by France to the United States under the general name of Louisiana, by the treaty of 1803. Congress, it is true, in passing the act of the 26th of May, 1824, thought proper to confine its provisions to the State of Missouri, and the then territory of Arkansas; and the claimants of land under titles derived from France and Spain, within the limits of the present State of Louisiana, and those parts of Mississippi and Alabama lying south of the thirty-first degree of north latitude, and between the Mississippi and Perdido, were denied those rights, which, by the act of 1844, reviving the old Missouri act, they are now permitted to enjoy. The situation of the present claimant is as nearly assimilated to that of claimants of land in Missouri, after the enactment of the law of 1824, as if Congress, instead of confining its provisions to a particular State or Territory, which had originally formed a portion of that vast extent of country acquired (according to the American construction of the treaty

of St. Ildephonso) under the name of Louisiana, had, in general terms, extended those provisions to grants of land lying in all the territory so acquired. And it is clear, to my mind, that the treaty of 1819 has, under the decisions of the Supreme Court and the acts of Congress, no more effect upon grants of land in Louisiana, lying east, than in that part of Louisiana lying west of the Mississippi, and now included within the limits of the State of Missouri. There is no inconsistency in the acts of 1824, and the decisions of the Supreme Court in the case of Foster & Elam vs. Neilson, and Garcia vs. Lee, so often referred to, except so far as the former designates the time prior to which the grants should bear date, to entitle the claimant to appear before the court, and confers upon the court itself those extraordinary powers, without which it would have no jurisdiction and no capacity to accomplish the purposes of justice. It is inconsistent with the act of 26th March, 1804, erecting Louisiana into two territories, so far as it withdraws grants made before the 10th of March, 1804, from the sweeping operations of the 14th section, which provides "that all grants for lands within the territories ceded by the French Republic to the United States, by the treaty of the 30th of April, 1803, the title whereof was, at the date of the treaty of St. Ildephonso, in the crown government or nation of Spain, and every act and proceeding subsequent thereof, of whatever nature, towards the obtaining any grant, title, or claim to such lands, and under whatsoever authority transacted or pretended, be, and the same are hereby, declared to be, and to have been from the beginning, null, void, and of no effect, in law or equity." This obviously was intended to act on all grants made by Spain after her retrocession of Louisiana to France, and without deciding on the extent of that retrocession, to put the titles which might be thus acquired through the whole territory, whatever might be its extent, completely under the control of the American Government. (2 Peters, 304.)

"Congress," said Chief Justice Marshall, in the case of Foster & Elam vs. Neilson, (2 Peters, 316,) "has reserved to itself the supervision of the titles reported by its commissioners, and has confirmed those which the commissioners have approved, but has passed no law withdrawing grants generally for lands west of the Perdido, from the 14th section of the act of 1804, or repealing that section." What Congress had not done at the time this opinion was delivered by the chief justice, it has now done, by the enactment of the law under which this court is proceeding to adjudicate upon the rights of the petitioner. I do not say that the section referred to has been totally and for ever repealed, but I am clearly of opinion that, for the space of five years from the approval of the act of 1844, reviving the act of 1824 for that length of time, this court has been, ex gratia, vested with higher and greater powers, than was from time to time conferred on commissioners. It is not simply called on to report the titles to land lying within the limits of the territory mentioned in the act, and leave their confirmation to the future action of Congress, but is authorized and required, "as a court of equity, to hold and exercise jurisdiction of every petition setting forth a claim

for lands, tenements, or hereditaments, by virtue of any French, Spanish, or British grant, concession, warrant, or order of survey, legally made, granted, or issued, before the 10th of March, 1804, by the proper authorities, to any person or persons resident in the province of Louisiana at the date thereof, or on or before the 10th of March, 1804, which was protected or secured by the treaty between the United States of America and the French Republic, of the 30th of April, 1803, and which might have been perfected into a complete title under, and in conformity to the laws, usages, and customs of the Government under which the same originated, had not the sovereignty of the country been transferred to the United States." The court is further "authorized and required to exercise jurisdiction in conformity with the principles of justice, and according to the laws and ordinances of the government under which the claim originated;" and, "has full power and authority to hear and determine all questions arising in said cause relative to the title of the claimants, the extent, locality, and boundaries of the claim, or other matters connected therewith, fit and proper to be heard and determined; and, by a final decree, to settle and determine the question of the validity of the title according to the law of nations, the stipulations of any treaty and proceeding under the same, the several acts of Congress in relation thereto, and the laws and ordinances of the government from which it is alleged to have been derived, and all other questions properly arising between the claimants and the United States."

The powers thus conferred upon this tribunal are broad and comprehensive, and it becomes my duty to test the validity of the title, now under consideration, by the rules and principles here prescribed.

We have already seen that the title was full and complete before the 10th of March, 1804; and that it was legally granted by the intendant, Juan Ventura Morales, a "lawful authority" of Spain, so constituted by the royal order of October, 1798, which directed "that the intendancy of these provinces, (Louisiana and West Florida,) be put in possession of the privilege to divide and grant all kind of land belonging to the crown."

Whether it would have been perfected into a complete title, if the territory had remained under the dominion of the King of Spain, is a question which cannot arise, since the "lawful authority" from which it emanated proceeded to the full extent required, to vest, as far as he could vest it, complete ownership in the grantee, and to place him in possession of the lands. It is proved by the deposition of Mr. Mazureau, that the grantee was a resident of Louisiana at the date of the grant. So far as the laws, ordinances, customs, and usages of the Spanish government apply, it is clear that nothing has been wanting to render the title regular in point of form. No doubt or difficulty has been raised by the district attorney on this branch of the case.

How far the grant is protected or secured by the stipulations of the treaty of the 30th of April, 1803, is a question not free from difficulty. There is an apparent inconsistency in the provisions of the first section of the act of the 26th of May, 1824, which has elicited an attentive ex-

amination. It authorizes and requires the court to take jurisdiction of any grant, concession, warrant, or order of survey, which was "made or issued before the 10th day of March, 1804, and which was protected or secured by the treaty between the United States of America and the French Republic of the 30th of April, 1803." The grant before the court was made before the 10th of March, 1804, but after the date of the treaty expressly referred to in the act. The question then naturally presents itself, how can a grant made after the date of the treaty be protected or secured by the treaty? Were the act of 1824 not in existence, this question could not receive a moment's consideration, or call for a serious answer. But when the court is told that a grant, dated after as well as before the treaty, must undergo judicial investigation, and be decided upon in conformity with certain rules and principles specifically established by Congress, it is not at liberty to say that all grants made after the treaty, must be investigated only to be rejected. It is not at liberty to say that the legislative department of the government, in passing the law of 1824, committed a vain act; that in offering to claimants under grants bearing date previous to a specified period, the means of obtaining justice, it really intended to delude them with a hope which could never be realized, and that in throwing open the tribunals for the purpose of examining into the merits of the titles which might be presented, it was guilty of solemn mockery in the form of a law. If no grants but such as were issued previous to the date of the treaty of 1803, are proper subjects of adjudication, it was totally unnecessary to prescribe the 10th of March, 1804, as the period beyond which the court could not act. If no grants issued subsequent to the date of the treaty, however regular they may be in point of form, however clearly and incontrovertibly they may be proved to be, the genuine acts of the officers charged with the disposition of the royal domain cannot be sustained, it is perfectly apparent that the position of the claimants under such grants, is really the same as when the Supreme Court decided the cases of Foster & Elam vs. Neilson, and Garcia vs. Lee. The court, it is true, is vested with jurisdiction, but for no other purpose in effect than to decide against the grants, whether fraudulent or genuine. If the act were passed for the purpose of obtaining a solemn judgment at law against the validity of the grants, it was altogether a vain thing; for, without the act, it was long since settled by the decisions of the highest tribunal known to the law, that a grantee by a title from Spain dated subsequent to the treaty of St. Ildephonso, of 1800, could not sustain an ejectment against a party in possession of land by virtue of a title from the United States. The United States then were, as far as they could be, placed beyond the encroachments of the grantees under Spain, without the law of 1824. But such absurdities, and such a want of magnanimity in its legislation, are not to be imputed to Congress. The provisions of the first section of the act of 1824, must not be regarded as forms without substance. The plain and commendable object which Congress had in view was to afford holders of grants from Spain, bearing date both before and subsequent to the date of the treaty of 1803,

and as late as the 10th of March, 1804, the opportunity for which it is notorious they had for many years petitioned, to show if they could, that they had such a claim upon the justice of the Government of the United States as would justify a relaxation in their favor of the stringent principles of law which had been previously applied. By the decision of the Supreme Court of the United States in the case of Garcia vs. Lee, it was settled that all acts of Spain in the granting of lands, after the date of the treaty of St. Ildephonso, that is, the first of October, 1800, were without authority; and all grants derived from her after that date, were invalid from an "intrinsic defect" in the title of the grantor. (12 Peters, 521.) If such be the stringent rule which this court, acting under the law of 1824, is to apply to grants made by Spain after the first of October, 1800, why was it not applied by the Supreme Court of the United States in the various cases which were carried up by appeal from Missouri under this very law? Compare the language used by Chief Justice Taney in the case thus cited, with that of Chief Justice Marshall in the case of Delassus vs. The United States, (9 Peters, 131,) and the extraordinary powers conferred on this court by the law of 1824 will be apparent. After stating that all grants bearing date previous to the 10th of March, 1804, were cognizable by the court, Chief Justice Marshall thus proceeds: "In the first article of the treaty of the 30th of April, 1803, the consul of the French Republic ceded to the United States in full sovereignty the province of Louisiana, with all its rights and appurtenances. The second article declares, that in this cession are included the adjacent islands belonging to Louisiana, all public lots and squares, etc., which are not private property." The third article stipulates, "that the inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, according to the principle of the Federal Constitution, to the enjoyment of all the rights and immunities of citizens of the United States; and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess." "These," continues the decision, "are the stipulations which afford that protection or security to claims to land under the French and Spanish governments, to which the act of Congress refers. They extend to all property, until Louisiana shall become a member of the Union, into which the inhabitants are to become incorporated as soon as possible, 'and admitted to all rights, advantages, and immunities of citizens of the United States.' That the perfect inviolability and security of property is among these rights, all will assert and maintain.

"The right of property, then, is protected and secured by treaty, and no principle is better settled in this country than that an inchoate title to lands is property.

"Independent of treaty stipulations, this right would be held sacred. The sovereign who acquires an inhabited territory acquires full dominion over it; but this dominion is never supposed to divest the vested rights of individuals to property. The language of the treaty ceding Louisiana excludes every idea of interfering with private property, of

transerring lands which had been severed from the royal domain. The people change their sovereign. Their right to property remains unaffected by the change."

Again, the Supreme Court, in the case of Smith vs. The United States, (10 Peters, 330,) say: "The law (of 1824) submitting claims of either of these four descriptions (that is, grants, concessions, warrants, or orders of survey) to judicial cognizance, confined the court to such as had been legally made, granted, or issued before the 10th of March, 1804, which were protected by the treaty of 1803, and might have been perfected into a complete title under the laws, usages, and customs of Spain, if she had continued to hold the Government of the province.

"It was also made the duty of the court to conduct the proceedings on all petitions according to the rules of a court of equity, and to decide upon them according to the principles of justice and the laws and ordinances of the Government under which the claim originated. In thus consenting to be made defendants in equity at the suit of every claimant for land in Missouri, the United States waived all rights which the treaty could give them as purchasers for a valuable consideration without notice. They bound themselves to carry into specific execution by patent every grant, concession, warrant, or order of survey, which, before the 10th of March, 1804, had created any legal or equitable right of property in the land so claimed. So that in every case arising under the law one general question was presented for the consideration of the court: whether in the given case a court of equity could, according to its rules and the laws of Spain, consider the conscience of the King to be so affected by his own or the acts of the lawful authorities of the province, that he had become a trustee for the claimant, and held the land claimed by an equity upon it, amounting to a severance of so much from his domain, before the 10th of March, 1804, in Missouri, and the 24th of January, 1818, in Florida, the periods fixed by the law in one case and the treaty in the other."

Now, from the language employed in these decisions, it is clear, that no distinction can be drawn by this court between grants made before and those made after the treaty of 1803, as late as the 10th of March, 1804.

From the reasoning of the court, it would appear that the stipulations of the treaty 1803 and proceedings under it were prospective in their operations, in the security and protection which they afford to private property which might be acquired while Spain remained in the exercise of sovereignty. By fixing the 10th of March, 1804, as the period beyond which the court could exercise no jurisdiction, it is apparent that Congress intended not to limit the protection and security to individual rights contained in those articles of the treaty, copied and commented on by Chief Justice Marshall, in Delassus vs. The United States, (9 Peters,) to the grants which had been made by Spain before the date of the treaty of St. Ildephonso, (1st October, 1800,) when, according to the opinion of the court in Garcia vs. Lee, (10 Peters,) her authority had

ceased ; but to extend them to grants made prior to the actual surrender of the territory of upper Louisiana to the American Government. This surrender took place on the 10th of March, 1804, the date mentioned in the act of 1824. In adjudicating upon the rights of claimants in Missouri, the Supreme Court have looked to the acts of the authorities of Spain, performed as well after as before the date of the treaty of St. Ildephonso, and have recognised those acts as the legitimate basis of their decrees; thereby showing conclusively that they did not consider the power of Spain exercised by those authorities was to be entirely disregarded. As a court of equity, they have recognised the authority of a sovereign de facto as sufficient to confer upon innocent grantees and purchasers, for a valuable consideration, as in the case now before me, rights of property which were protected by the treaty and the laws of nations. In the case of the United States vs. Arredondo, (6 Peters,) the Supreme Court say: "A decree may be founded upon the stipulations of the treaty and proceedings under it, or it may be independent of them, according to the laws of nations, Congress, or Spain; each of which is of as high obligation as the treaty, and on either of which alone we may found our decree." From this authority, the several rules of decision prescribed by the act of 1824 may be taken disjunctively, and that upon the laws of nations alone the title of a claimant, if genuine, may be sustained. Let us, then, consider these laws in their application to the powers of a sovereign de facto. To enable us better to comprehend the full force of the application, it will be necessary to look at some of the most prominent historical facts connected with the surrender of the province of Louisiana.

The treaty of cession was signed at Paris, on the 30th of April, 1803. On the 31st of October following, Congress gave authority to the President to take possession of Louisiana; and it is somewhat remarkable that Salcedo and Casa Calvo, the Spanish colonial authorities, did not deliver up the territory to the French commissioner, (Laussat,) by virtue of the treaty of St. Ildephonso of the first of October, 1800, until the 30th of November, 1803. On the 20th of December, 1803, according to Martin's History of Louisiana, "the flag of France was made to give way to that of the United States," and on that day Claiborne and Wilkinson received from Laussat, the commissioner on the part of France, the keys of the city of New Orleans, and were formally put in possession of Louisiana by virtue of the treaty of cession of the 30th of April, 1803.

The treaty of St. Ildephonso was the secret agreement of the cabinets of Versailles and Madrid, which was never known to the inhabitants of Louisiana until a few days previous to the cession of Louisiana to the United States, and the very commissioner delegated by the French Government to receive the province from Spain also surrendered it to our own Government. The authorities of Spain were, therefore, in the full exercise of all the rights appertaining to the sovereignty of their King two years and two months after the province of Louisiana was nominally transferred to France, and seven months after the date of the

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treaty by which France ceded it to the United States. These facts have afforded most cogent reasons for the equitable interference of Congress.

Different portions of the vast territory ceded, or supposed to have been ceded, under the name of Louisiana, were formally surrendered to or taken forcibly by the United States, at different times. We have already seen that upper Louisiana—that portion now included within the limits of the present State of Missouri—was surrendered on the 10th of March, 1804. That portion lying between the Mississippi and Perdido was never taken possession of until 1810. It was then, for the first time, occupied by a military force. It is well known that about that period the Spanish nation was agitated by a bloody revolution, and that its legitimate sovereign was a prisoner at the instigation of the French Emperor. The inhabitants of the Floridas were fearful that the Spanish-American Colonies would fall into the rapidly extending power of Napoleon. Many of the most influential citizens of Baton Rouge and its vicinity had formed for themselves a temporary colonial government, for the preservation of the Spanish authority. To avert the evils which would necessarily arise from the establishment of a Government which was deemed too weak for its own security, and inadequate to the due enforcement of the commercial relations existing between Spain and the United States, Mr. Madison, then President, promptly resolved to take possession of the territory under the direction of Congress, and hold it subject to future amicable negotiation and adjustment. In the proclamation which was issued on the occasion, the President declared that, although the country west of the Mississippi, as far as the Perdido, had been claimed as part of Louisiana, acquired by the treaty of 1803, the question of disputed boundary would still remain in our hands, open to negotiation.

When the province of Louisiana was surrendered by Salcedo and Casa Calvo to the French commissioner, they issued a proclamation containing a specific declaration of what would henceforth be the boundary line between the Spanish territory of West Florida and the province of Louisiana, then retroceded to France. This boundary line is distinctly set forth, as the very same which had been irrevocably fixed by the definitive treaty of peace concluded at Paris, on the 10th of February, 1763; all the country east of Mississippi and the Iberville, and north of the Lakes Maurepas and Ponchartrain, was still to remain subject to the Crown of Spain, under the name of West Florida; while all south and west of that boundary line, then bearing the name of Louisiana, was to be retroceded to France, with the same extent that it had been originally acquired from her by the treaty of 1763. The French commissioner made no protest against the boundaries here set forth, but delivered the province to the American commissioners, without any mention of the territory east of the Mississippi. No claim to this territory was asserted by the American Government until the 31st of March, 1804, when it was promptly resisted by Casa Calvo, and the authorities of Spain remained in the actual possession of the country,

and in the exercise of all the rights of sovereignty. In the diplomatic correspondence which subsequently passed between the ministers of our Government and those of France and Spain, it appears that both France and Spain denied, in most unequivocal language, that any territory east of the Mississippi was ceded by the treaties of St. Ildephonso, 1800, and the 30th of April, 1803. I do not advert to these historical facts for the purpose of showing that the claim of the American Government was unfounded, but that, while the question of disputed boundary was a subject of discussion, Spain was sovereign de facto of the territory, when the grant now under consideration was made. The grant was, indeed, full and complete before the American Government even asserted a right to the territory, and made while the authorities of Spain, we may fairly presume, believed they were acting by virtue of a sovereignty de jure, as in reality they were acting in virtue of a sovereignty de facto. How far grants thus made are protected by the laws of nations, is a question which has already received the consideration of the executive, legislative, and judicial departments of our Government.

In our recent controversy with Great Britain, in relation to the north-eastern boundary, it appears to have been agreed, by both parties, to be a fundamental principle of public law and of common justice, that the acts of a sovereign Power over the territory which has been ceded, are lawful until possession has been transferred. (Mr. Clay to Mr. Vaughan, 17th of March, 1828.) In the case of Rhode Island vs. Massachusetts, the Supreme Court of the United States hold the following language: "It is said that the people inhabiting the disputed territory ought to be made parties, as their rights are affected. It might with the same reason be objected, that a treaty or compact settling boundary, required the assent of the people to make it valid, and that a decree under the ninth article of the confederation was void, as the authority to make it was derived from the legislative power only. The same objection was overruled in Penn vs. Baltimore, and in Pool vs. Fleeger this court declared that an agreement between States consented to by Congress, bound the citizens of each State.

There are two principles of the laws of nations which would protect them in their property. 1st. That grants, by a Government de facto, of parts of a disputed territory in its possession, are valid against the State which had the right. 2ndly. That, when a territory is acquired by treaty, cession, or even by conquest, the rights of the inhabitants to property are respected and sacred. (12 Peters, 748.) In the case of De la Croix vs. Chamberlin, (12 Wheaton, 600–'2,) which involved the validity of an order of survey by the Spanish Government for lands lying between the Mississippi and Perdido, the court say: "The order of survey bears date in 1806. At that date the Spanish authorities were in the actual possession of the territory of Mobile, where the land lies; and they claimed it as part of the Floridas, then belonging to the Spanish crown. The United States claimed it as part of Louisiana. But it is not necessary to investigate these conflicting claims. The United States have since obtained the Floridas, by purchase and ces-

sion from Spain, and Louisiana, as claimed by the United States. A question of disputed boundary between two sovereign independent nations, is indeed much more properly a subject of diplomatic discussion and treaty, than of judicial investigation. If the United States and Spain had settled their dispute by treaty, before the United States extinguished the claim of Spain to the Floridas, the boundary thus fixed would have concluded all parties. But, as that was not done, the United States have never, as far as we can discover, distinguished between concessions of land made by the Spanish authorities within the disputed territory, while Spain was in the actual possession of it, from concessions of a similar character made by Spain in the acknowledged limits." The court decided that the order of survey was not sufficient to authorize a recovery; but they at the same time show that Congress had distinctly recognised the right of Spain to make grants while she was in the actual possession of the territory. And who can doubt, from the language here quoted, that with a law like that of 1824 for their guidance and authority, the court would have sustained even the order of survey, if it bore date prior to the 10th of March, 1804, as an inchoate grant, which would have been perfected into a complete title, had the territory remained under the dominion of Spain.

In the case of the lessee of Pollard's heirs vs. Kibbe, (14 Peters, 364,) Mr. Justice Thompson, in delivering the opinion of the court, says: "The territory had been ceded to the United States by the Louisiana treaty, but, in consequence of some dispute with Spain respecting the boundary line, this part of the territory remained in the possession of Spain. And it is a fact established by the public documents and laws of Congress, and cases which have come before this court, that, during the period between the cession by France, and the acquiring possession by the United States, Spain continued to issue evidences of title of various descriptions; some complete grants, and others which were only inchoate rights or concessions."

The act of Congress of the 25th of April, 1812, appointing commissioners to ascertain the titles and claims to lands on the east side of the river Mississippi, and west of the river Perdido, and falling within the cession by France, embraced all claims of this description; it extended to all claims by virtue of any grant, order of survey, or other evidence of claim whatsoever, derived from the French, British, or Spanish Governments. And the reports of the commissioners show that evidence of claims of various descriptions issued by Spanish authority, down to the year 1810, came under the examination of the commissioners; and the legislation of Congress shows many laws passed confirming incomplete titles, originating after the date of the treaty between France and Spain at St. Ildephonso.

"Such claims are certainly not beyond the reach of Congress to confirm, although it may require a special act of Congress for that purpose; and the present claim being founded upon such act, distinguishes it from the doctrine of this court in the cases of Foster & Elam vs. Neilson, (2 Peters,) and Garcia vs. Lee, (12 Peters,) and such claims have

been recognised by this court as existing claims, and not treated as being absolutely void." The court then proceed to review and confirm the principles recognised in De la Croix vs. Chamberlin, (12 Wheaton,) already referred to.

A further confirmation of the views here presented will be found in the case of Keene vs. McDonough, (8 Peters, 310,) in which, by a decree of a Spanish court, rendered in 1804 at Baton Rouge, which is within the disputed territory, lands were sold and conveyed to the defendant's grantor, who held them under such decree and sale. Mr. Justice Thompson, who delivered the opinion of the Supreme Court affirming its validity, says: "The adjudication having been made by a Spanish tribunal, after the cession of the country to the United States, does not make it void; for we know, historically, that the actual possession of the territory was not surrendered until some time after these proceedings took place. It was the judgment, therefore, of a competent Spanish tribunal having jurisdiction of the case, and rendered whilst the country, although ceded, was de facto in the possession of Spain, and subject to Spanish laws. Such judgments, so far as they affect the private rights of the parties thereto, must be deemed valid. This view of the case supersedes the necessity of considering the question of prescription."

This Spanish tribunal, it must be remembered, was the governor of the province, acting in his judicial capacity, in which he had power, by the Spanish law, to order a sale of land. This sale passed the title of the proprietor to the purchaser on the execution of a deed, which was deemed the strongest and safest conveyance known to the jurisprudence of Spain. In his political capacity, the same governor had power to dispose of the royal domain, and to make grants thereof; which conferred a right of property in the lands so granted. The right of the United States to the territory where the land claimed is situated, before the actual delivery, could not be said to combine what is denominated by civilians the jus ad rem with the jus in re. "The interpreters of the Roman law," says Barbeyrac, in his notes on Puffendorff, "have borrowed their distinction of jus in re et ad rem from the canon law, and they use it as a consequence of what the ancient lawyers maintained, that no bare agreements transfer any property; and therefore a thing must be delivered, unless there has been a possession for some time, as it happens in prescription. Hence it follows that when, for example, a bargain of sale is passed, no right is acquired to the thing itself, (jus in re,) but only a right to oblige the seller to deliver it to us, that we may take possession of it, and by that means acquire a right to it. This is what the interpreters call jus ad rem; as much as to say, a right to have and acquire a thing; whereas, by jus in re, they understand the right that they have already acquired to the thing." (Puffendorff, b. iv, s. 8; note by Barbeyrac, 2 in sec. 8.) The case of the Fame, (4 Rob. Ad. Rep., 113,) was one which involved a question respecting the national character of Louisiana; that is, whether it was at the time of capture, (May, 1808,) to be considered a Spanish settlement, or as

belonging to France, by reason of the treaty of St. Ildephonso, by which it was ceded to that country. Sir William Scott, after stating the question at issue to be, "how far full sovereignty can be held to have passed by the mere words of the treaty, without actual delivery," proceeds thus to give his opinion: "It is to be observed, then, that all corporeal property depends very much upon occupancy. With respect to the origin of property, this is the sole foundation: quod nullius est ratione naturali occupanti conceditur. So with regard to transfer, also, it is universally held in all systems of jurisprudence, that to consummate the right of property, a person must unite the right of the thing with possession. A question has been made, indeed, by some writers, whether this necessity proceeds from what they call the natural law of nations, or from that which is only conventional. Grotius seems to consider it as proceeding only from civil institutions. Puffendorff and Pothier go farther. All concur, however, in holding it to be a necessary principle of jurisprudence, that to complete the right of property, the right to the thing, and the possession of the thing, should be united; or, according to the technical expression, borrowed either from the civil law, or as Barbeyrac explains it, from the commentators on the canon law, that there should be both the jus in rem and the jus in re. This is the general law of property, and applies, I conceive, no less to the right of territory than to other rights. Even in newly discovered countries, where a title is meant to be established for the first time, some act of possession is usually done and proclaimed as a notification of the fact. In transfer, surely, where the former rights of others are to be superseded and extinguished, it cannot be less necessary that such a change should be indicated by some public acts, that all who are deeply interested in the event, as the inhabitants of such settlements, may be informed under whose dominion, and under what laws they are to live. This, I conceive, to be the general propriety of principle on the subject, and no less applicable to cases of territory than to property of any description. It will be only necessary to inquire whether the practice has been conformable to what we conceive to be the true principle of law. On this point no doubt can be entertained. The corps diplomatique is full of instances of this kind. Where stipulations of treaties for ceding particular countries are to be carried into execution, solemn instruments of cession are drawn up, and adequate powers are formally given to the persons by whom the actual delivery is to be made. In modern times such a proceeding is become almost a matter of necessity, with regard to the colonial establishments of the States of Europe in the new world. The treaties by which they are affected, may not be known to them for months after they are made. Many articles must remain executory only, and not executed till carried into effect; and until that is done by some public act, the former sovereignty must remain. Amongst the instances that might be cited to show what the practice has been on this subject, I will mention only a few. On the cession of Nova Scotia to France, by treaty, on the 21st of July, 1667, the act of cession, which purports to be made in consequence of the treaty, was not drawn up

till February, 1668, when full powers were sent out to deliver up the settlement to the person who should be empowered to take possession under the great seal of France. Another instance, which comes nearer to the present question, is to be found in the proceedings which took place when the very settlement of Louisiana was ceded by France to Spain in 1762. It passed by act of cession drawn up in solemn form, and dated more than a year after the treaty itself. Indeed, modern history abounds in such instances. If to these it were necessary to add the authority of a judicial recognition of the principle, I think the case of Wroughton vs. Mann, to which I alluded on a former day, is strongly in point. That was a case before the delegates, on appeal in a revenue cause. The act of court pleaded, "that East Florida was ceded to Spain by the treaty of 1783, and that eighteen months were allowed for emigration. Secondly. That notwithstanding the treaty, the English laws continued till the Spanish Government arrived, and received delivery from General Tonin; and the formal instruments under which possession was afterwards taken, were exhibited." The offence charged, was an act of importation contrary to the British laws long after the ratification of the treaty, but before the arrival of the Spanish Governor, and the actual delivery. Objections were taken to the allegation, similar to the arguments which have been urged in the present case, viz., that the country had passed to Spain by virtue of the treaty; that the continuance of British possession was but an usurpation; and that the offence was no longer amenable to the British laws. If that could have been sustained, the plea must have been bad; but it was not so held. The court of delegates were of opinion that the contract was merely executory, and that, till it was carried into execution, the British possession and the British laws continued in full force; on this ground the allegation was admitted. I am of opinion, therefore, that on all the several grounds of reason or practice, and judicial recognition, until possession was actually taken, the inhabitants of New Orleans continued under the former sovereignty of Spain."

The court then proceeded to decree restitution of the property upon the ground that the claimants were Spanish subjects, notwithstanding the cession of Louisiana to France, as no delivery of possession had yet taken place.

"With respect to the cession of places or territories by a treaty of peace," says Kent in his commentaries on the law of nations, (Lecture viii,) "though the treaty operates from the making of it, it is a principle of public law, that the national character of the place agreed to be surrendered by treaty continues as it was under the character of the ceding country until it be actually transferred.

"Full sovereignty cannot be held to have passed by the mere words of the treaty without actual delivery. To complete the right of property, the right to the thing and the possession of the thing must be united. This is a necessary principle in the law of property in all systems of jurisprudence.

"There must be both the jus in rem and the jus in re, according to the

distinctions of the civilians, and which Barbeyrac says they borrowed from the canon law. This general law of property applies to the right of territory no less than to other rights. The practice of nations has been conformable to this principle, and the conventional law of nations is full of instances of this kind, and several of them were stated by Sir William Scott in the opinion which he gave in the case of the Fama."

Such are the opinions of the most eminent European and American jurists on the rights of the sovereign de facto; and in my opinion they fully sustain the authority of Spain to make the grant in question. The question how far such a grant would enable the holder to recover in an action of ejectment against a possessor in good faith, under a title from the United States, does not and cannot arise in the case before the court under the law of 1824. The 11th section of that act expressly provides, that if it should so happen that the lands decreed to any claimant under the provisions of the act, shall have been sold by the United States, or otherwise disposed of, it shall be lawful for the claimant to enter a like quantity of land in parcels conformable to sectional divisions and subdivisions, in any land office in Louisiana. The manifest intention of Congress was to protect and quiet settlers under titles derived from the United States, and at the same time give to the bona fide grantees of Spain a compensation in other lands belonging to the public domain; and while the act of 1824 recognises the existence of grants made by Spain subsequent to the date of the treaty of St. Ildephonso, it also confers jurisdiction on this court to enquire into their validity, and distinguish those which may be genuine from those which may be fraudulent. The jurisdiction thus conferred must be exercised, without any reference whatever to the question of disputed boundary, over all grants made before the 10th of March, 1804.

For the reasons here given, I am satisfied that the grant under consideration comes strictly within the purview of the law; that it is a genuine grant from the authorities of Spain, which was full and complete before the 10th of March, 1804; that it was protected and secured by the stipulation of the treaty of 1803, which, according to the legislative construction contained in the act of 1824, and the judicial decisions of the Supreme Court upon cases arising under said act, was never intended to operate from the day it was signed in Paris, against all grants made by Spain after the date of the treaty of St. Ildephonso, but to protect and secure all grants which were made in good faith, until the surrender of the territory by the sovereign de facto, and the inhabitants were protected by the laws of the United States. I am satisfied that the grant is protected by the laws of nations, so far as those laws recognise and establish the rights of the sovereign de facto over territory in his possession.

And whether these laws are to be considered as operating conjunctively with the stipulations of the treaty, or disjunctively above and beyond the treaty, as the Supreme Court declared in Arredondo they may operate, they still protect and secure the right of the petitioner. I am satisfied that it was made by a lawful authority of Spain, so constituted by the royal order of 1798, and in accordance with the laws and ordinances

of the Spanish monarchy, and is by them confirmed. I am satisfied that the act of 1824 was intended to relieve the bona fide claimant from the stringent principles of law recognised by the Supreme Court when acting without the authority of an act of Congress; and that sitting as a court of equity I am bound to apply the rules of decision laid down by the act of 1824, with direct reference to the rights of an innocent grantee and purchaser for a valuable consideration without notice.

It is therefore ordered, adjudged, and decreed, that the petitioner recover the land claimed in his petition, and described in the survey of Pintado, revised by Trudeau, appended thereto; and if it should happen that any portion of said land has been sold, or otherwise disposed of, by the United States, it is ordered that for such parties the petitioner have the right to enter other lands belonging to the United States, at any land office in Louisiana, according to the provisions of the 11th section of the act of 1824. It is further ordered that the costs of this suit be paid by the petitioner.

I, N. R. Jennings, clerk of the district court of the United States for the district of Louisiana, do certify, that the foregoing 34 pages contain a true and correct copy of the reasons of the judgment as of record in this office.

[L. S.] As witness my hand, and the seal of the court, this 13 day of January, 1847.

N. R. JENNINGS, *Clerk*.

Filed 25th January, 1847.